

# Senate File 495 - Introduced

SENATE FILE \_\_\_\_\_  
BY COMMITTEE ON NATURAL  
RESOURCES AND ENVIRONMENT

(SUCCESSOR TO SSB 1235)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to water quality.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
3 TLSB 1804SV 82  
4 tm/je/5

PAG LIN

1 1 Section 1. NEW SECTION. 7.23 WATERSHED COUNSELOR.  
1 2 1. The governor shall establish a position of watershed  
1 3 counselor as part of the governor's office and appoint a  
1 4 person in the governor's office or the lieutenant governor's  
1 5 office to serve in the position.  
1 6 2. The watershed counselor shall do all of the following:  
1 7 a. Coordinate staff communication, programs, and funding  
1 8 in state agencies responsible for water resources with the  
1 9 purpose of achieving common goals.  
1 10 b. Develop a strategic water plan for the state which  
1 11 includes water quality and water quantity considerations. The  
1 12 plan shall be filed with the general assembly and with the  
1 13 governor by December 31, 2008.  
1 14 c. Update the strategic water plan by January 1, 2010, and  
1 15 at five-year intervals thereafter.  
1 16 d. File a written progress report with the general  
1 17 assembly and the governor by January 15 of each year beginning  
1 18 in the calendar year 2010 regarding the achievement of goals  
1 19 stated in the strategic water plan.  
1 20 e. Coordinate the development and implementation of the  
1 21 goals identified in the strategic water plan.  
1 22 f. Monitor and regularly assess if water programs and  
1 23 processes administered by agencies in the executive branch are  
1 24 enabling the strategic water plan goals to be achieved and if  
1 25 progress is being made toward achieving the goals.  
1 26 g. In consultation with the secretary of agriculture and  
1 27 the director of the department of natural resources, lead the  
1 28 science advisory council established in section 7.25.  
1 29 h. In an effort to achieve strategic water plan goals,  
1 30 coordinate watershed programs with local governments, the  
1 31 state government, the federal government, community colleges,  
1 32 and nongovernmental entities.  
1 33 i. Direct a statewide ongoing comprehensive assessment and  
1 34 planning process for eight-digit hydrologic unit code  
1 35 watersheds that enables the continued priority identification  
2 1 of impairments to water quality and the potential sources of  
2 2 the impairments. Data collected and modeling conducted  
2 3 through this process are for planning purposes only and shall  
2 4 not be used in an enforcement action. Individual identifying  
2 5 data shall not be considered a public record subject to  
2 6 examination and copying under chapter 22. The geological  
2 7 survey bureau of the department of natural resources and the  
2 8 division of soil conservation of the department of agriculture  
2 9 and land stewardship shall cooperatively assist locally led  
2 10 watershed groups in the development of eight-digit hydrologic  
2 11 unit code watershed goals.  
2 12 3. The watershed counselor shall not be considered an  
2 13 agency under section 17A.2 and shall not have any independent  
2 14 authority to regulate.  
2 15 4. The department of natural resources shall provide any  
2 16 information or data requested by the watershed counselor.  
2 17 Sec. 2. NEW SECTION. 7.24 STRATEGIC WATER PLAN.  
2 18 1. The watershed counselor shall do all of the following

for purposes of developing the strategic water plan:

- a. Consult with the department of natural resources, the department of agriculture and land stewardship, organizations represented on the watershed improvement review board established in section 466A.3, the Iowa division of the natural resources conservation service of the United States department of agriculture, the state soil conservation committee established in section 161A.4, and any other entities deemed appropriate by the watershed counselor.
- b. Review the water quality programs administered by the department of natural resources, the department of agriculture and land stewardship, and soil and water conservation districts.
- c. Review recommendations of the sustainable natural resource funding study established in 2006 Iowa Acts, ch. 1185. This review is not required for the development of strategic water plans subsequent to the initial strategic water plan.
- d. Review recommendations from the watershed quality planning task force established in 2006 Iowa Acts, ch. 1145. This review is not required for the development of strategic water plans subsequent to the initial strategic water plan.

2. A strategic water plan shall include all of the following:

- a. The status of water quality and quantity programs and resources.
- b. A review of financial and personnel resources available to water quality and quantity programs in the state and their use.
- c. A needs assessment to implement water programs in the state including staff and program funding resources to implement the strategic water plan.
- d. An inventory and status of watershed improvement projects including private, local, state, and federally funded projects. The inventory shall include a description of each project, the development or implementation phase of each project, any available documented outcomes of each project, and the amount of public and private resources invested in each project.
- e. Priority identification of watersheds in the state for focused watershed improvement efforts during the term of the strategic water plan.
- f. Criteria used by the watershed counselor for priority identification of watersheds in the state.
- g. Identification of plans for providing financial and technical assistance to locally led watershed improvement efforts including the assessment of the watersheds for sources of impairment.
- h. Recommendations for legislative action and plans to enable the achievement of goals on an eight-digit hydrologic unit code watershed basis.

3. In addition to the elements in subsection 2, the initial strategic water plan shall include all of the following:

- a. Recommendations to establish a delivery infrastructure for achieving watershed goals on an eight-digit hydrologic unit code watershed basis including necessary resources and program development.
- b. Recommendations to establish a locally led process to identify water quality improvement goals in eight-digit hydrologic unit code watersheds and strategic plans for working toward the achievement of those goals.
- c. Recommendations for a process and resources necessary to establish watershed assessments on watersheds identified as a priority for water quality improvement in the strategic water plan.
- d. Data from a statewide watershed assessment conducted by the department of natural resources that enables the priority identification of priority watershed for water quality improvement efforts.

4. The strategic water plan shall not be submitted to the governor and general assembly unless the plan is approved by the watershed improvement review board. Prior to submitting the plan to the board for approval, the watershed counselor shall allow a period of not less than sixty days for public comment on the plan.

Sec. 3. NEW SECTION. 7.25 SCIENCE ADVISORY COUNCIL.

A science advisory council is established with membership determined by the watershed counselor in consultation with the secretary of agriculture and the director of the department of natural resources. The council shall recommend basic

4 30 scientific standards on which state environmental rules shall  
4 31 be based. The standards shall be adopted by the environmental  
4 32 protection commission by rule. A notice of intended action  
4 33 filed by the commission shall substantially reflect any  
4 34 conclusions made by the science advisory council.

4 35 Sec. 4. Section 22.7, Code 2007, is amended by adding the  
5 1 following new subsections:  
5 2 NEW SUBSECTION. 58. Individual identifying data collected  
5 3 as part of a statewide ongoing comprehensive assessment and  
5 4 planning process for eight-digit hydrologic unit code  
5 5 watersheds pursuant to section 7.23, subsection 2.  
5 6 NEW SUBSECTION. 59. Information collected or provided  
5 7 during the provision of services listed in section 161A.101,  
5 8 subsection 2.

5 9 Sec. 5. NEW SECTION. 161A.101 VOLUNTARY ENVIRONMENTAL  
5 10 PERFORMANCE BUREAU.  
5 11 1. A voluntary environmental performance bureau is  
5 12 established within the division.  
5 13 2. The bureau shall do all of the following:  
5 14 a. Assist agricultural producers with a review of  
5 15 regulatory and conservation needs and opportunities.  
5 16 b. Conduct voluntary farm assessments and manure  
5 17 management planning for both permitted and nonpermitted open  
5 18 feedlots operations and confinement feeding operation  
5 19 structures.  
5 20 c. Provide comprehensive evaluations of associated field  
5 21 conservation practices.  
5 22 d. Provide compliance assistance to agricultural producers  
5 23 with respect to applicable state and federal regulations.  
5 24 e. Communicate regulatory requirements for agricultural  
5 25 producers to the general public through electronic and other  
5 26 means.  
5 27 f. Collaborate with the department to develop eight-digit  
5 28 hydrologic unit code watershed goals.  
5 29 3. The bureau may contract and train third-party vendors  
5 30 to provide any of the services listed in subsection 2.  
5 31 4. Any information obtained or provided during the  
5 32 provision of services listed in subsection 2 shall not be used  
5 33 in an enforcement action and shall not be considered public  
5 34 records subject to examination and copying under chapter 22.  
5 35 5. Activities under subsection 2 conducted by the bureau  
6 1 or a third-party vendor shall not take the form of enforcement  
6 2 activities.

6 3 Sec. 6. Section 455B.173, subsection 2, Code 2007, is  
6 4 amended by adding the following new unnumbered paragraph:  
6 5 NEW UNNUMBERED PARAGRAPH. If the United States  
6 6 environmental protection agency has established nationally  
6 7 recommended water quality criteria pursuant to section  
6 8 304(a)(1) of the federal Clean Water Act, a state water  
6 9 quality standard shall not be more restrictive than the  
6 10 federal recommendation. A state water quality standard shall  
6 11 not be modified to be more restrictive unless all of the  
6 12 following are met:  
6 13 a. The rule is required by the federal Clean Water Act.  
6 14 b. Research and practice trials have demonstrated that the  
6 15 standards or requirements of the more restrictive rule can be  
6 16 met with the use of economically feasible technology.  
6 17 c. The established or modified rule provides a reasonable  
6 18 time frame for accomplishing the goals of the water quality  
6 19 standard considering the scope of the economic impact of the  
6 20 rule and the number of land acres impacted by the rule should  
6 21 the new restriction cause a water segment to be placed on the  
6 22 section 303(d) list.  
6 23 d. A rule establishing or modifying a nutrient standard  
6 24 shall not be adopted unless the standard can be met with  
6 25 available voluntary land care programs.

6 26 Sec. 7. Section 455B.173, Code 2007, is amended by adding  
6 27 the following new subsection:  
6 28 NEW SUBSECTION. 13. Adopt rules establishing a program  
6 29 for water quality credit trading for nutrients, sediments, and  
6 30 other pollutants. The program shall be designed to do all of  
6 31 the following:  
6 32 a. Achieve water quality improvements more quickly than  
6 33 would otherwise be possible.  
6 34 b. Lead to a more cost-effective way to achieve water  
6 35 quality standards in waters of the state.  
7 1 c. Provide economic incentives for reductions in nonpoint  
7 2 source pollution.  
7 3 d. Provide other environmental benefits including but not  
7 4 limited to restoring natural flow patterns, improving aquatic  
7 5 habitat, increasing the ability of streams to process certain

7 6 pollutants, and creating stream buffers, shading, and other  
7 7 benefits that go beyond reducing pollutants.

7 8 Sec. 8. Section 455B.174, Code 2007, is amended by adding  
7 9 the following new subsection:

7 10 NEW SUBSECTION. 6. Conduct watershed assessments,  
7 11 including modeling and water monitoring prior to the  
7 12 development of total maximum daily loads. If a total maximum  
7 13 daily load has been developed by the effective date of this  
7 14 Act, watershed assessments shall be conducted and the total  
7 15 maximum daily load shall be modified accordingly. A watershed  
7 16 assessment shall include a scientific identification of  
7 17 geographic areas to prioritize for achieving total maximum  
7 18 daily loads. The department may contract with a third party  
7 19 for purposes of conducting the watershed assessments.

7 20 Sec. 9. NEW SECTION. 459.104 VARIANCES.

7 21 A person who owns or operates a confinement feeding  
7 22 operation may apply for a variance from the rules or standards  
7 23 adopted by the department by filing an application with the  
7 24 department. The application shall be accompanied by such  
7 25 information and data required by the department.

7 26 1. The director shall promptly investigate the application  
7 27 and approve or disapprove the application. The director may  
7 28 grant a variance if the director finds that the applicant  
7 29 satisfactorily demonstrates that the management or control  
7 30 system adopted for the confinement feeding operation will  
7 31 provide an equivalent level of performance to that achieved by  
7 32 the requirement from which a variance is requested absent the  
7 33 additional management or control system. Demonstration of  
7 34 equivalent performance may include submitted results of  
7 35 computer modeling which compares the predicted performance of  
8 1 the proposed management or control system with that achieved  
8 2 by the requirement from which a variance is sought.

8 3 2. The applicant may request a review hearing before the  
8 4 department if the application is denied.

8 5 3. The director may grant a variance for a specific period  
8 6 of time or a permanent variance, as deemed necessary and  
8 7 appropriate by the director.

8 8 4. The director shall maintain a record of each variance  
8 9 granted specifying the reasons for its issuance or extension.

8 10 Sec. 10. Section 466A.3, Code 2007, is amended by adding  
8 11 the following new subsection:

8 12 NEW SUBSECTION. 5. A voting member of the board who is  
8 13 not a state employee as defined in section 68B.2 shall be paid  
8 14 a per diem as specified in section 7E.6.

8 15 Sec. 11. CLEAN WATER ACT. The department of natural  
8 16 resources and the department of agriculture and land  
8 17 stewardship shall work with the United States environmental  
8 18 protection agency to modify the portion of the federal Clean  
8 19 Water Act delegation agreement to move the administration of  
8 20 section 319 of the federal Clean Water Act to the department  
8 21 of agriculture and land stewardship.

8 22 Sec. 12. AGRICULTURAL DRAINAGE WELL WATER QUALITY  
8 23 ASSISTANCE PROGRAM. The department of agriculture and land  
8 24 stewardship shall increase the amount of assistance provided  
8 25 under the agricultural drainage well water quality assistance  
8 26 program established pursuant to section 460.304.

8 27 Sec. 13. RESEARCH. With appropriated moneys and grants  
8 28 received by Iowa state university of science and technology,  
8 29 the college of agriculture shall take the lead in conducting  
8 30 basic and applied research and education to determine  
8 31 practicable science-based solutions for nutrient and sediment  
8 32 impairment issues. The college shall do all of the following:

8 33 1. Leverage research and education efforts, collaborate  
8 34 with other colleges and centers at Iowa state university of  
8 35 science and technology and other land grant or United States  
9 1 department of agriculture research institutions.

9 2 2. Develop land care program templates for successfully  
9 3 minimizing water quality impacts from the production of farm  
9 4 commodities, including corn and soybeans, with minimal crop  
9 5 yield losses.

9 6 3. Research agronomic fertilization needs of crops  
9 7 throughout the state, beginning with corn and soybeans, to  
9 8 develop recommendations both to meet crop needs and minimize  
9 9 the potential for nutrient runoff, including but not limited  
9 10 to whether manure can be applied to a soybean crop without  
9 11 increasing the amount of nitrogen runoff from what is expected  
9 12 from a corn crop. The research shall evaluate at a minimum  
9 13 the effects of various application rates, a corn and soybean  
9 14 rotation, and continuous corn production for comparison  
9 15 purposes.

9 16 4. Research alternatives to reduce the water impact of

9 17 man-made drainage while continuing to meet land drainage needs  
9 18 for working agricultural lands.

9 19 5. Consult with the water counselor in developing its  
9 20 research plan.

9 21 EXPLANATION

9 22 This bill relates to water quality.

9 23 The bill requires the governor to establish a position of  
9 24 watershed counselor as part of the governor's office and  
9 25 appoint a person in the governor's office or the lieutenant  
9 26 governor's office to serve in the position. The bill requires  
9 27 the watershed counselor to coordinate staff communication,  
9 28 programs, and funding in state agencies responsible for water  
9 29 resources with the purpose of achieving common goals; develop  
9 30 a strategic water plan for the state; update the strategic  
9 31 water plan by January 1, 2010, and at five-year intervals  
9 32 thereafter; file a written progress report with the general  
9 33 assembly and the governor by January 15 of each year beginning  
9 34 in the calendar year 2010; coordinate the development and  
9 35 implementation of the goals identified in the strategic water  
10 1 plan; monitor and regularly assess if water programs and  
10 2 processes administered by agencies in the executive branch are  
10 3 enabling the strategic water plan goals to be achieved; in  
10 4 consultation with the secretary of agriculture and the  
10 5 director of the department of natural resources, lead the  
10 6 science advisory council; in an effort to achieve strategic  
10 7 water plan goals, coordinate watershed programs with local  
10 8 governments, the state government, the federal government,  
10 9 community colleges, and nongovernmental entities; and direct a  
10 10 statewide ongoing comprehensive assessment and planning  
10 11 process for eight-digit hydrologic unit code watersheds that  
10 12 enables the continued priority identification of water quality  
10 13 impairments and their potential sources.

10 14 The bill provides that the watershed counselor shall not be  
10 15 considered an agency under Code section 17A.2 and shall not  
10 16 have any independent authority to regulate. The bill provides  
10 17 that the department of natural resources shall provide any  
10 18 information or data requested by the watershed counselor.

10 19 The bill provides that, for purposes of developing the  
10 20 strategic water plan, the watershed counselor shall consult  
10 21 with the department of natural resources, the department of  
10 22 agriculture and land stewardship, organizations represented on  
10 23 the watershed improvement review board established in Code  
10 24 section 466A.3, the Iowa division of the United States  
10 25 department of agriculture, natural resources conservation  
10 26 service, the state soil conservation committee established in  
10 27 Code section 161A.4, and any other entities deemed appropriate  
10 28 by the watershed counselor; review the water quality programs  
10 29 administered by the department of natural resources, the  
10 30 department of agriculture and land stewardship, and soil and  
10 31 water conservation districts; review recommendations of the  
10 32 sustainable natural resource funding study; and review  
10 33 recommendations from the watershed quality planning task  
10 34 force.

10 35 The bill provides that the initial strategic water plan and  
11 1 subsequent strategic water plans shall include certain data  
11 2 and recommendations. The bill requires the strategic water  
11 3 plan to be approved by the watershed improvement review board.

11 4 The bill establishes a science advisory council with  
11 5 membership determined by the watershed counselor in  
11 6 consultation with the secretary of agriculture and the  
11 7 director of the department of natural resources. The bill  
11 8 requires the council to recommend basic scientific standards  
11 9 on which state environmental rules shall be based. The bill  
11 10 requires the standards to be adopted by the environmental  
11 11 protection commission.

11 12 The bill provides that individual identifying data  
11 13 collected as part of a statewide ongoing comprehensive  
11 14 assessment and planning process for eight-digit hydrologic  
11 15 unit code watersheds and information collected or provided  
11 16 during the provision of services by the voluntary  
11 17 environmental performance bureau are not open records.

11 18 The bill establishes within the division of soil  
11 19 conservation of the department of agriculture and land  
11 20 stewardship a voluntary environmental performance bureau. The  
11 21 bill requires the bureau to assist agricultural producers with  
11 22 a review of regulatory and conservation needs and  
11 23 opportunities, conduct voluntary farm assessments and manure  
11 24 management planning for both permitted and nonpermitted open  
11 25 feedlots operations and confinement feeding operation  
11 26 structures, provide comprehensive evaluations of associated  
11 27 field conservation practices, provide compliance assistance to

11 28 agricultural producers with respect to applicable state and  
11 29 federal regulations, communicate regulatory requirements for  
11 30 agricultural producers to the general public through  
11 31 electronic and other means, and collaborate with the  
11 32 department to develop eight-digit hydrologic unit code  
11 33 watershed goals. The bill allows the bureau to contract and  
11 34 train third-party vendors to provide any of the services  
11 35 required of the bureau and that such services conducted by the  
12 1 bureau or a third-party vendor shall not take the form of  
12 2 enforcement activities.

12 3 The bill provides that if the United States environmental  
12 4 protection agency has established nationally recommended water  
12 5 quality criteria pursuant to the federal Clean Water Act, a  
12 6 state water quality standard shall not be more restrictive  
12 7 than the federal recommendation. The bill provides that a  
12 8 state water quality standard shall not be modified to be more  
12 9 restrictive unless the rule is required by the federal Clean  
12 10 Water Act, research and practice trials have demonstrated that  
12 11 the standards or requirements of the more restrictive rule can  
12 12 be met with the use of economically feasible technology, the  
12 13 established or modified rule provides a reasonable time frame  
12 14 for accomplishing the goals of the water quality standard,  
12 15 and, if the rule establishes or modifies a nutrient standard,  
12 16 the rule shall not be adopted unless the standard can be met  
12 17 with available voluntary land care programs.

12 18 The bill requires the environmental protection commission  
12 19 to adopt rules establishing a program for water quality credit  
12 20 trading for nutrients, sediments, and other pollutants.

12 21 The bill requires the department of natural resources to  
12 22 conduct watershed assessments, including modeling and water  
12 23 monitoring prior to the development of total maximum daily  
12 24 loads. The bill provides that, if a total maximum daily load  
12 25 has been developed by the effective date of this bill,  
12 26 watershed assessments shall be conducted and the total maximum  
12 27 daily load shall be modified accordingly.

12 28 The bill provides that a person who owns or operates a  
12 29 confinement feeding operation may apply for a variance from  
12 30 the rules or standards adopted by the department of natural  
12 31 resources by filing an application with the department. The  
12 32 bill requires the director of the department to promptly  
12 33 investigate the application and approve or disapprove the  
12 34 application. The director may grant a variance if certain  
12 35 findings are made. The bill allows the applicant to request a  
13 1 review hearing before the department if the application is  
13 2 denied. The bill allows the director to grant a variance for  
13 3 a specific period of time or permanently. The bill requires  
13 4 the director to maintain a record of each variance granted  
13 5 specifying the reasons for its issuance or extension.

13 6 The bill provides that any voting member of the watershed  
13 7 improvement review board who is not a state employee shall be  
13 8 paid a per diem.

13 9 The bill requires the department of natural resources and  
13 10 the department of agriculture and land stewardship to work  
13 11 with the United States environmental protection agency to  
13 12 modify the portion of the federal Clean Water Act delegation  
13 13 agreement to move the administration of section 319 of the  
13 14 federal Clean Water Act to the department of agriculture and  
13 15 land stewardship.

13 16 The bill requires the department of agriculture and land  
13 17 stewardship to increase assistance under the agricultural  
13 18 drainage well water quality assistance program.

13 19 The bill provides that, with appropriated moneys and grants  
13 20 received by Iowa state university of science and technology,  
13 21 the college of agriculture shall take the lead in conducting  
13 22 basic and applied research and education to determine  
13 23 practicable science-based solutions for nutrient and sediment  
13 24 impairment issues.

13 25 LSB 1804SV 82

13 26 tm:rj/je/5